

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Thoi H. Ho, et al.

Serial No. 10/579,360

Filed: May 10, 2006

For: Stabilized Polyethylene Material

Art Unit: 1794

Examiner: Erik Kashnikow

Mail Stop AF

Commissioner for Patents

P.O. Box 1450

Arlington, VA 22313-1450

DECLARATION UNDER 37 CFR § 1.132

I, Carl F. Baker, declare and say as follows:

1. I am a research scientist and have more than 29 years experience in the material science. I received a bachelor of science degree in Mechanical Engineering from Texas A&M University in College Station, Texas in 1981. Since 1981, I have held the position of Material Science Specialist at The Dow Chemical Company at Freeport, Texas, and am responsible for polyethylene-based pipe products. My research at The Dow Chemical Company is in the area of polyethylene-based pipes.

2. I have read and am familiar with the amended claims of the US Patent Application Number 10/579,360. Furthermore, I have read and am familiar with the Office Action mailed August 20, 2009 in connection with the US Patent Application Number 10/579,360. Additionally, I have read and am familiar with the US Patent Number 5,032,632 ("Saxton"). Therefore, I make this

Declaration in support of the patentability of the amended claims of the US Patent Application Number 10/579,360. In particular, I make this Declaration to describe why the EVOH in the Saxton reference would alter the material characteristics of the present invention.

3. The claims of the US Patent Application Number 10/579,360 are directed to a pipe consisting essentially of: an ethylene alpha-olefin interpolymer, and an antioxidant system.

4. US Patent Number 5,032,632 ("Saxton") requires ethylene vinyl alcohol copolymer ("EVOH") providing improved resistance to oxidative and thermal degradation and gelation. (Column 1, Lines 5-10).

5. Because of non-compatibility between ethylene alpha-olefin inter-polymers and ethylene vinyl alcohol copolymers, ethylene alpha olefin inter-polymers and ethylene vinyl alcohol copolymers are immiscible, which is generally known to a person of ordinary skill in the art.


6. Since it is generally known to a person of ordinary skill in the art that ethylene alpha-olefin inter-polymers and ethylene vinyl alcohol copolymers are immiscible, it is obvious that the use of ethylene vinyl alcohol copolymers as an additional component to the required ethylene alpha-olefin inter-polymers of the present invention, would alter the material characteristics of the present invention, for example, a pipe prepared from a composition comprising ethylene alpha olefin inter-polymers and ethylene vinyl alcohol copolymers would have discontinuous phases, which would cause failures of certain improved properties of the present invention. Therefore, not only does Saxton fail to motivate a person of

ordinary skill in the art to use EVOH has an additional component, but a person of ordinary skill in the art is also discouraged from using EVOH as an additional component.

7. Therefore, I conclude that the use EVOH in the Saxton reference would alter the material characteristics of the present invention.

8. I further declare that all statements made herein of my knowledge are true and that all statements made on information and belief are believed to be true, and further, that these statements are made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Dated: April 1, 2010


By: Carl F. Baker